

In the High Court of Uttaranchal, at Nainital.

Appeal From Order No. 33/2002

- 1- Smt. Chander Bhano W/o Late Mahender Singh
- 2- Master Amarjeet Sharma, S/o late Mahender Singh,
Aged 13 years.
- 3- Master Pankaj Sharma S/o Late Mahender Singh
Aged 11 years,
- 4- Master Govind Sharma S/o Late Mahender Singh
Aged 8 years,
- 5- Km. Soni Sharma D/o Late Mahender Singh
Aged 6 years,

All residents of Nai Basti, Harbanswala, Semadwar
District Dehradun- appellants 2 to 5
Through their mother/natural guardian
Smt. Chander Bhano Appellants.

Versus

- 1- Kendriya Lok Nirman Vibhag (C.P.W.D.)
Subhash Marg, Dehradun through
Executive Engineer.
- 2- Driver, Maruti Gypsy No. U.P. 07-1389
through Executive Engineer, C.P.W.D.
Subhash Marg, Dehradun ... Respondents.

Sri H.M. Bhatia, holding brief for Sri M.C. Pant, Advocate
for the appellants.

Smt. Anjali Bhargava, Advocate for the respondents.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.**

Dated: 10th May, 2006

This Appeal from Order, U/S 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 10-10-2001 passed by Addl. District Judge/III F.T.C., Dehradun in M.A.C.P. No. 136/1998 Smt. Chandra Bhano and others versus Kendriya Lok Nirman Vibhag and another, whereby the claimants/appellants were awarded Rs. 2,00,000/- as compensation against the opposite parties/respondents along with

9% per annum interest from the date of filing of the petition till the date of actual payment of compensation amount.

2- Brief facts giving rise to the present appeal are that on 3.5.1995 at about 2.30 P.M. in the afternoon the deceased Mahendra Singh was going to his home on a bicycle on his left side. When he reached at Indira Nagar Tiraha near Anurag Nursery, Maruti Gypsy bearing registration No. U.P.07-1389 came from behind very rashly and negligently and hit at the bicycle of Mahendra Singh. He fell down and sustained grievous injuries. The injured was taken to Hospital but there he was declared dead. It was alleged by the claimants in the claim petition that the deceased was Raj Mistri and was earning Rs. 4000/- per month. The claimants were dependents on the deceased. Therefore the claimants/appellants claimed Rs. 10,00,000/- as compensation.

4- The Opposite Parties/respondents contested the claim petition and filed joint written statement. The O.Ps. have denied the involvement of Maruti Gypsy No. U.P.07/1389 in the accident. It was also alleged that the O.P.No.2 driver of the Maruti Gypsy was driving the vehicle at a moderate speed and he was not rash and negligent. It was also pleaded that the deceased was not a Raj Mistri and was not earning Rs. 4000/- per month as alleged by the claimants. The compensation amount is exorbitant.

5- On the pleadings of the parties, the Tribunal framed the following issues for determination:-

1- Whether the alleged accident resulting in the death of deceased Mahendra Singh occurred due to the negligence on the part of the driver of Maruti Jeep (Gypsy) no. UP-07-1389? If so, its effect?

2- To what amount of compensation, if any, are the claimants entitled to recover and from whom?

6- The claimants/appellants examined P.W.1 Smt. Chandra Bhano and P.W.2 Suresh in support of their claim. But the respondents did not adduce any evidence. The Tribunal on assessment of evidence on record, allowed the claim petition and awarded them Rs. 2,00,000/- as compensation along with 9% per annum interest against the O.Ps./respondents.

7- Feeling aggrieved, the claimants/appellants have come up in appeal before this Court for enhancement of the compensation awarded by the Tribunal.

8- We have heard the learned counsel for the parties and perused the record.

9- The sole grievance of the claimants/appellants by way of this appeal is that the quantum of compensation as awarded by the Tribunal is too insufficient, unreasonable and meager as well as it is contrary to the facts and evidence on record. The claimants have thus filed this appeal for enhancement of the quantum of compensation awarded by the claim Tribunal.

10- From perusal of the claim petition it reveals that an amount of Rs. 10,00,000/- has been claimed as compensation in lieu of the death of deceased Mahendra Singh. It is pleaded in the claim petition that the deceased was working as Raj Mistri and was earning a sum of Rs. 4000/- per month. P.W.1, Smt. Chander Bhano is the widow of the deceased and she has stated that her husband used to earn Rs. 4000/- per month. The claimants/appellants have also produced P.W.2, Suresh. He has also stated that the deceased was working as Raj Mistri. This witness has also stated that the deceased had worked for him and he paid the deceased Rs. 80/- per day for the work of Raj Mistri. But no reliable and cogent evidence has been filed by the claimants/appellants in order to show the actual income of the deceased. Whatever has been stated by the witnesses produced before the Court below is based upon assumption and presumption. Hence under the Schedule-II of Section 163-A of the Motor Vehicles Act the principle of notional income which is Rs. 15,000/- per annum, shall be applied in case where the income of the deceased has not been proved. The Tribunal has rightly concluded the income of the deceased as Rs. 15,000/- per annum. In case if 1/3rd of the amount which the deceased would have spent upon himself, is deducted, then the total dependency loss would be worked out to be Rs. 10,000/- per annum. This is exactly what has been done by the Tribunal.

11- At the time of the accident the age of the deceased was 29 years and this factum has not been denied by the respondents. Therefore, in view of the Schedule-II given under Section 163-A of the Motor Vehicles Act, a multiplier of 18 would be applicable for the age group of a person between 20 to 30 years. After multiplying the sum of Rs. 10,000/- with the multiplier of 18, the total dependency loss would be worked out for Rs. 1,80,000/-.

12- We do not find any ground for interference in the aforesaid amount awarded by the Tribunal in favour of the claimants/appellants. The Tribunal has further awarded an amount of Rs. 20,000/- for the funeral of the deceased as well as for loss of consortium. However the amount awarded under these heads by the Tribunal is not liable to be disturbed. Thus the Tribunal has rightly awarded the total amount of rupees two lacs as compensation in favour of claimants/appellants along with an interest of 9% per annum from the date of filing the petition till the date of actual payment.

13- On assessment of evidence on record, we come to the conclusion that the Tribunal has not committed any error in calculating the amount of compensation to be awarded in favour of the claimants/appellants. We do not find any illegality or perversity in the impugned judgment and award of the Tribunal.

14- The appeal lacks merit and is liable to be dismissed.

15- Accordingly the appeal is dismissed. The impugned judgment and award dated 10-10-2001 passed by Addl. District Judge/ III F.T.C. Dehradun in MACP No. 136/1998 is hereby confirmed.

(B.C. Kandpal, J.) (P.C. Verma, J.)